IN THE HIGH COURT OF JUDICATURE OF ANDHRA PRADESH AT HYDERABAD

THE HON'BLE MRS. JUSTICE T. MEENA KUMARI
And
THE HON'BLE MS. JUSTICE G ROHINI

W.P. No. 26728 of 2007

Dated : December 18, 2007

Between:
M/s. EMAMI LIMITED,
5-5-184, Vanasthalipuram,
Hyderabad.
Rep. by its G P A Holder
Sri K V N Krishna Kishore
..petitioner

And

1. **The Additional Commissioner (CT) (Legal)**
   Office of the Commissioner of Commercial Taxes
   Andhra Pradesh, Hyderabad and another

..Respondents

THE HON'BLE MRS. JUSTICE T. MEENA KUMARI
And
THE HON'BLE MS. JUSTICE G ROHINI

W.P. No. 26728 of 2007

ORDER (per Hon'ble Mrs. Justice T Meena Kumari) :

This writ petition is filed by way of Writ of Mandamus

seeking to set aside the order of 1st respondent dated 04.12.2007 passed in CCT's Ref. No. LIII(2)/874/2007 interdicting the respondent authorities from collecting the balance disputed tax.

Petitioner is a public limited company registered under the Companies Act, 1956 and is a registered dealer under Aandhra Pradesh General Sales Tax and CST Acts on the rolls of the second respondent and is engaged in manufacturing various products, including Boroplus Prikly Heat Power, Navaratan Oil, Boroplus Antiseptic Cream, Chavan Prash, etc. The petitioner filed returns for the Assessment Year 2003-04 claiming Navaratan Oil as Drug falling under Entry 37 of the I Schedule to the APGST Act and accordingly paid tax @ 10%. However, the second respondent without proper appreciation of facts and the legal position levied tax at 20% under entry 36 of the I Schedule to the Act and further also levied tax @ 8% on the turnover relating to sales returns of pens vide Assessment order dated 30.03.2007. The petitioner carried the matter before the Appellate Deputy Commissioner and the same was dismissed vide order dated 12.11.2007 against which the petitioner preferred further appeal before STAT on 29.11.2007 and the same is pending. Along with the Appeal, the petitioner also filed stay petition, which was dismissed by the first respondent by impugned order dated 04.12.2007 vide CCT's Ref.No. LIII(2)874/2007. Hence, the writ petition.

Heard the learned counsel for the petitioner and the learned Special Standing Counsel for the respondents.

The controversy is that pending an appeal, application for stay was dismissed by the Competent Authority. We have gone through the record. We feel that the interest of justice would have been met if stay was granted pending Appeal, subject to deposit of 50% of the liability. Therefore, we set aside the order of the Authority and direct that 50% of the tax shall be paid by the petitioner within a period of eight weeks from the date of receipt of a copy of this order. For such period, there shall be an unconditional stay and stay shall continue till disposal of the appeal, provided the amount is deposited within the stipulated time. The deposit of amount shall be without prejudice to the rights of the petitioner in appeal. If any amount has already been paid by the petitioner, the same shall be given credit.

The writ petition is accordingly disposed of. No costs.

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T. MEENA KUMARI, J

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G ROHINI, J

Dt. 18.12.2007
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THE HON'BLE MRS. JUSTICE T. MEENA KUMARI
And
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W.P. No. 26728 of 2007

(Order of the Division Bench delivered by the Hon'ble Mrs. Justice T Meena Kumari) :

18th December 2007